

caused the specific and, frequently, uneven formation of the Baltic IP legal doctrine and practice.

Notwithstanding the fact that, from the current legislative point of view, the national IP system is duly regulated, especially due to the formal and actual integration into the EU processes, Baltic history still has a strong influence, which does not always allow a consistent implementation of EU-wide provisions in practice. Moreover, factors such as the extremely rapid transformation since the declarations of independence of the Baltic countries from centralized economies with weak protection of IP rights to market economies with strong protection of IP rights and the Soviet “IP-mentality” of the people adopting and applying the laws play an enormous role in the creation of an IP-friendly environment in the Baltic countries. The period immediately following the declarations of independence is considered to be only a short transformation period, one which obviously promises additional possible changes in the future.

## ***C. Overview of the current national regulatory and institutional framework for the enforcement of IP rights***

### *I. Adoption of national IP legislation: some procedural aspects*

Under the national Constitutions of the Baltic countries<sup>165</sup>, national laws are adopted by the national parliaments (the *Riigikogu* (est.) in Estonia, the *Seimas* (lt.) in Lithuania and the *Saeima* (lv.) in Latvia) and are only enforced after they are officially signed and proclaimed by the national presidents<sup>166</sup>. As the drafting of national laws in the national parliaments is mainly subject to discussions by the parliamentary committees<sup>167</sup>, the role of those committees in the process of the adoption of national legislation, as well as its approximation and implementation with EU legal provisions and international obligations is of the highest importance<sup>168</sup>.

In the area of drafting national substantive IP legislation and the procedural laws which are important for the IP enforcement, the Cultural Affairs and the Legal Af-

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165 Refs. to the 1992 Estonian Constitution, Articles 65(1) and 78(6); the 1922 (last amended in 2003) Latvian Constitution, Articles 64 and 70; the 1992 Lithuanian Constitution, Articles 67 (2) and 70. See also *supra* Fts. 109-111 herein.

166 All the national legislative acts, after they are signed and proclaimed, can be found in the official magazines (Engl. “State Gazette”): for Lithuania – “Valstybės žinios” (lt.); for Estonia – “Riigi Teatuja” (est.), and for Latvia – “Latvijas Vēstnesis” (lv.).

167 Refs. to the 1992 Estonian Constitution, Article 71; the 1922 (last amended in 2003) Latvian Constitution, Articles 25; the 1994 Statute of the Lithuanian Parliament (last amended in 2006), Section III.

168 It should also not be forgotten that on the EU legislative level the Baltic members at the European Parliament have their own representatives (Estonia has 6, Latvia - 8, and Lithuanian – 12 representatives at the European Parliament (2010 data)) who can directly participate in law-adoption processes in the EU legislative institution.

fairs Committees in the Estonian Parliament, the Education, Science and Culture and the Legal Affairs Committees in the Lithuanian Parliament and in the Latvian Parliament, as well as the Development of Information Society Committee in the Lithuanian Parliament are mainly involved. According to the Statutes of the national parliaments<sup>169</sup>, experts from the IP field, who are not the members of the national parliaments, can provide their opinions and attend the meetings of the listed parliamentary committees while the amendments to the national laws are being drafted. It allows IP practitioners to directly participate in the legislative process which, considering the speedy transposition of laws and creation of the national IP systems, is to be seen as an important factor helping the national legislators to adopt or implement legal provisions by closely considering practical needs and actual problems.

In addition to the parliamentary committees and the national Ministries of Culture of the Baltic countries<sup>170</sup>, which are the essential links in the chain of drafting the national IP legislation<sup>171</sup>, other institutions which have played, and are playing, an important role in the law-adoption process should be mentioned. The provision of the opinions and expertise by the former European Committee to the Government<sup>172</sup> of Lithuania is considered very valuable for the preparation of the contemporary IP legislation. As far as the enforcement of IP rights were concerned, the qualitative legal conclusions provided by the European Committee were valuable in approximating the national legislation with the EU provisions. For example, along with other factors the Committee's independent conclusion regarding the term "*commercial purposes*" arguably impelled the Lithuanian legislators to improve the provisions in the Law on Copyright and Neighbouring Rights<sup>173</sup> that was in force at that time. Moreover, the opinions which are provided by foreign and local IP right hold-

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169 Art. 48(8) of the 1994 Statute of the Lithuanian Parliament provides for the possibility of forming working groups consisting, *inter alia*, of experts from the field to prepare the draft laws. Similarly, the possibility of third-person experts attending the committees' sessions is provided in Art. 22(3) of the 2003 Estonian Riigikogu Rules of Procedure Act and in Section VI of the 1994 Latvian Saeima Rules of Parliamentary Procedure (all documents as amended).

170 Their role is discussed in the subsequent section.

171 E.g., the last amendments to the national copyright legislation in regard with the enforcement of IP rights have been made by the Ministries of Culture. More on the work of the national Ministries of Culture, the cultural strategies, and reports see *Estonian Ministry of Culture Information (2008)*, *Latvian Ministry of Culture Information (2008)* and *Lithuanian Ministry of Culture Information (2008)*.

172 The European Committee was reorganized beginning January 1, 2004, with the interception of its functions by the Department of the Coordination of the EU Policy Analysis and Positions at the Chancery of the Government of Lithuania.

173 *The European Committee at the Government of the Republic of Lithuania, 3 December 2002 Letter No. 2002-11-11, on Commercial Purposes Term*. In the explanatory letter, the experts of the European Committee broadly explained the term "*commercial purposes*". Such explanations were later reflected in the subsequent positions undertaken by the parliamentary groups which were drafting the amendments to the national IP legislation. For further analysis on the national court practice and the terms "*commercial purposes*" and "*commercial scale*" regarding Recital 14, Dir. see in *infra* § 5C.II.2.

ers<sup>174</sup> on one side and, for instance, consumers' associations on the other, allow the legislators to implement or adopt legal provisions which mirror the local IP situation and practice, while, at the same time, being in compliance with international obligations.

## *II. Competence and functions of the main national IP institutions*

As a rule, national laws are to be enforced by adopting the national secondary legislation, which concretizes the legislative provisions as embodied in the primary laws. According to the national Constitutions, the responsible institutions approved by the Governments in the field of copyright and neighbouring rights, namely, the national Governments and the national Ministries of Culture, adopt legal acts (regulations, decrees, or orders, respectively) in which concrete enforcement rules are embodied. IP institutions are established and they function under the secondary legislation which clearly list and define their aims, competencies, and functions.

The role and functions of the national Copyright Boards at the Ministries of Culture, the national patent and trademark offices, and the collective administration societies should be especially considered in a discussion on the enforcement of IP rights. Moreover, as follows from the actual practice of application of certain enforcement provisions, the quality and accuracy of the national secondary legislation plays a role. Hence, the effective work of these institutions in the field of drafting laws is highly valuable.

### *1. The Ministries of Culture: the Copyright Divisions and Boards*

With regard to influencing their societies' views and attitude towards intellectual property as well as to their participation in the processes of adopting and amending IP laws, the role of the national Ministries of Culture cannot be underestimated<sup>175</sup>. Since their creation<sup>176</sup>, the Copyright and Neighbouring Rights Divisions and the Copyright Boards at the national Ministries of Culture of the Baltic countries played, and are playing, an important role in both the processes of the creation of the enforcement system of IP rights and the approximation of the EU legal provisions with the national ones.

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174 *E.g.*, the opinions provided by the foreign associations of IP right holders such as BSA, IFPI are meant herein.

175 This could be well illustrated by referring to the objects and activities planned by the national governments and the Ministries of Culture. *E.g.*, one of the priority questions in the program of the Lithuanian Government for the year 2007-2008 was educating the public on IP questions. Moreover, the Ministry is prepared to create an anti-piracy centre concept as well as draft amendments to the Criminal Code and Code of Administrative Offences, as listed in *Report (2007 Annual) by the Lithuanian Ministry of Culture*, pp. 10-11.

176 The Copyright Committee at the Ministry of Culture of Estonia was established in 1992, the Copyright Board in Lithuania in 2000. In Latvia the Copyright and Neighbouring Rights Division at the Ministry of Culture started to function at the beginning of 2000.